LANGUAGE ACCESS FOR ASYLUM SEEKERS IN BORDERLAND DETENTION CENTERS IN TEXAS

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Abstract

Extreme gang violence in El Salvador, Guatemala, and Honduras has prompted thousands of mothers and children to seek refuge in the United States. In response to the 2014 migrant crisis, the United States' use of family detention centers represents one of the most controversial aspects of the Obama administration's political response. For-profit detention centers located in Karnes, Texas and Dilley, Texas, are currently housing thousands of asylum-seeking mothers and children beyond capacity (García-Ditta 2015: n.p.). The gravity of the current refugee crisis is only exacerbated by language barriers – one of the direst obstacles to avoiding swift removal processes. A crucial step in the asylum-seeking process is the credible fear interview (CFI), an immigration proceeding in which a person must demonstrate credible fear of returning to his or her home country or be subject to deportation. This article directly locates language mediation in non-criminal immigration proceedings as a human right to which institutional compliance is still unresponsive and ineffectual. The authors aim to offer a descriptive analysis of US immigration proceedings with a brief final discussion which contemplates the unexplored aspects of the legal and ethical grey zone of language access in borderland detention centers.

Keywords: interpreting in asylum proceedings; detention centers; credible fear interview; language access in immigration hearings.

ACCÉS A SERVEIS LINGÜÍSTICS PER ALS SOL·LICITANTS D'ASIL EN ELS CENTRES DE DETENCIÓ DE LES ZONES FRONTERERES DE TEXAS

Resum

La violència extrema de les bandes criminals d'El Salvador, Guatemala i Hondures ha provocat que milers de mares i nens busquin refugi als Estats Units. Com a resposta a la crisi migratòria del 2014, l'ús que els Estats Units ha fet dels centres de detenció per a famílies representa un dels aspectes més controvertits de la resposta política que va donar l'Administració Obama. Actualment, els centres de detenció privats que es troben a Karnes i Dilley (Texas) allotgen, per sobre de la seva capacitat, milers de mares i nens sol·licitants d'asil (García-Ditta 2015: s. p.). La gravetat de la crisi de refugiats actual es veu agreujada, a més, per la barreres lingüístiques: un dels pitjors obstacles per evitar processos de trasllat immediat. Un pas molt important en el procediment de sol·licitud d'asil és l'entrevista per determinar si hi ha un temor creïble (credible fear interview, CFI), un tràmit en l'àmbit de la immigració en què la persona ha de demostrar, de forma creïble, que té por de tornar al seu país d'origen o de ser deportat. Aquest article considera de forma directa la mediació lingüística dins els procediments d'immigració no penals com un dret humà la garantia del qual, per part de les institucions, encara no s'ha fet efectiva. Els autors busquen oferir una anàlisi descriptiva dels procediments d'immigració dels Estats Units que acaba amb una breu reflexió sobre els aspectes pendents d'explorar de la zona grisa jurídica i ètica de l'accés als serveis lingüístics en els centres de detenció de les zones frontereres.

Paraules clau: la interpretació en els tràmits d'asil; centres de detenció; entrevistes per determinar si hi ha temor creïble; l'accés als serveis lingüístics en les audiències d'immigrants.

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Summary

1 Introduction and overview

Extreme gang violence in El Salvador, Guatemala, and Honduras has prompted thousands of mothers and children to seek refuge in the United States. In response to the migrant crisis of 2014, the United States' use of family detention centers represents one of the most controversial aspects of the Obama administration's political response. The Immigration and Customs Enforcement-run detention centers located in Karnes, Texas and Dilley, Texas, are currently housing thousands of asylum-seeking mothers and children beyond capacity (García-Ditta 2015: n.p.). The gravity of the current refugee crisis is only exacerbated by language barriers – barriers which represent one of the direst obstacles to avoiding swift removal processes. A crucial step in the asylum-seeking process is the credible fear interview (CFI), an immigration proceeding in which a person must demonstrate credible fear of returning to his or her home country or be subject to deportation. In order for asylum seekers to be able to adequately present their petitions in credible fear interviews, they must have the opportunity to seek legal counsel and receive preparation in a language they can understand.

The detainees in Karnes and Dilley, two major borderland detention centers, are women and children who have been apprehended after crossing the border to the United States. Immediately upon being captured along the Texas-Mexico border, migrant men, women, and children are detained in short-term facilities referred to as *hieleras*, or iceboxes, for days at a time, and forced to sleep on cold, concrete floors in overcrowded cells (García-Ditta 2015: n.p.). Subsequently they are housed in detention centers for up to a year as they await their first interview with asylum officers in order to find out whether or not they have met the requirements to formally seek asylum or whether they will be automatically deported.[1] The great majority of people comes from El Salvador, Guatemala and Honduras, with these three countries accounting for a full 85 percent of immigrants from Central America (Zong & Batalova 2015: n.p.).

Karnes and Dilley exclusively house women and girls, a population of Central American migrants who have often left their home countries due to sexual assault, rape, and gender-related intimidation and violence, often at the hands of gangs and organized crime. As the number of Central American women and girls crossing into the United States continues to spike, so is the staggering amount of sexual violence waged against these migrants who are in search of a better life. According to a Fusion investigation, 80 percent of women and girls crossing into the United States by way of Mexico are raped during their journey (America with Jorge Ramos, producer, 2016), a statistic which surpasses a previous estimate of 60 percent, according to an Amnesty International report (Amnesty International 2010: 15).

Even more tragically, tens of thousands of child migrants cross the border completely alone. The two significant surges of unaccompanied minors entering the United States during and around 2014 were directly responsible for the re-implementation of the use of for-profit detention centers to house and process a staggering number of undocumented children. From the start of fiscal year 2014 through July 31, 2015, 72,968, or 74 percent, of the unaccompanied minors apprehended by US Customs and Border Protection (CBP) at the US-Mexico border were from El Salvador, Guatemala, and Honduras (Zong & Batalova, 2015: n.p.). During the same year, the number of Central American girls caught at the US - Mexico[2] border rapidly outpaced the number of boys, according to a July Pew Research study (Jordan 2014: n.p.). More recently, as of 2016, the number of unaccompanied girls under 18 is up 77 percent this year alone (America with Jorge Ramos, producer, 2016), marking a trend in the feminization of child migrants across the US-Mexico border.

Female genderedness and gender non-conformance constitute factors which put detainees at considerable high risk both while crossing the border and within the confines of detention centers, constituting an under-researched area of inquiry related to the vulnerable populations housed in the border's private prisons.[3]

1 Male detainees are sent to the South Texas Detention Center, a privately-owned prison located in Pearsall, Texas.

2 Of the children who were apprehended, more than three quarters were caught crossing the Rio Grande Valley in Texas (Park 2015: n.p.).

3 Gender non-conforming detainees represent another highly vulnerable population as it is the policy of the United States to place detainees in detention with inmates of the sex they were assigned at birth. This policy was carried out even in the high profile case of US Army soldier Chelsea Manning, a transgender woman who was sentenced to 35 years in military prison for leaking secret military and diplomatic files to the website WikiLeaks. Manning was housed in a men's prison for seven years before President Obama commuted her sentence (Pilkington, Smith, & Gambino, 2017: n.p.). The Transgender Law Center reports that "LGBTQ immigrants are often placed in detention facilities that misgender them, allow/foster physical and sexual abuse, and ignore verbal and physical harassment from both other detainees and detention guards" (Transgender Law Center, n.d.).

While this article aims to shed particular light on language access obstacles, the fact that persecution based on sexual orientation and gender identity is a global phenomenon must be duly noted (Heitz 2013: 214).

In borderland detention facilities, the language access difficulties of the women and girls are compounded when they are also native speakers of indigenous languages. While language barriers pose a significant problem of access to the US immigration system for nearly all migrants, this barrier becomes more acute and difficult to surmount in the case of speakers of minority languages from several areas of Central America. In an unpublished study carried out by two graduate student researchers in Peace and Justice Studies at the University of San Diego, the authors reveal that the Department of Homeland Security "does not provide any training to its personnel to be able to identify indigenous languages, … [and has] no standard assessment tools or consistent access to interpretation if that language is identified" (Azevedo & Cychosz: 2016: 2). As a result, speakers of indigenous languages are sometimes perceived to have been informed about their legal rights when they were not, and some face longer detention times if agents realize that a migrant speaks little or no Spanish or English (Azevedo & Cychosz 2016: 3-4). Furthermore, they may labor under the additional fear that information shared with an interpreter of their languages, spoken by exceedingly few people, will find its way back to their home communities.

In a memorandum from the US Department of Homeland Security to Asylum Office Directors, it was acknowledged that neither of the two language service providers with whom Asylum Headquarters contracts has interpreters available for the Guatemalan language Ixil, and that interpreters of other languages such as Mam are very limited, meaning that "scheduling their use can lead to lengthy delays in the process of the credible fear case" (Kim 2013: 1). Similarly, in a complaint submitted to the Department of Homeland Security Office of Civil Rights and Civil Liberties and the Office of the Inspector General by the CARA Family Detention Pro Bono Project, indigenous peoples are identified as Central America's most vulnerable, impoverished, and illiterate citizens (CARA Family Detention Pro Bono Project 2015: 2), with indigenous women identified as being even less likely to be proficient in Spanish than indigenous men. CARA Project staff report that Customs and Border Protection agents routinely misidentify indigenous women's primary language as Spanish and incorrectly report that indigenous women understood interrogations conducted in Spanish (CARA Family Detention Pro Bono Project 2015: 3) when, in fact, they did not. These communication barriers have resulted in women and children of indigenous languages living in virtual solitary confinement, sometimes even resulting in the erroneous deportation of families seeking protection in the United States.

Moreover, in a scathing indictment of the points of language exclusion contact for indigenous language-speaking individuals in the US immigration system, the technical review "Exclusion of Indigenous Language Speaking Immigrants (ILSI) in the US Immigration System" states that

> Limited English Proficiency [(LEP)] programs in CBP [Customs and Border Patrol] and ICE [Immigration and Customs Enforcement] have been identified as having inadequate standards, non-mandated, and non-compensated language training for staff. LEP programs lack any viable process for language assessment of indigenous language speaking immigrants. They have not conceived of a language assessment process for indigenous language speaking immigrants beyond instructing their front line staff to complete them. LEP program practice suffers from policy that is "coordinated" but without evaluation and without monitoring for effectiveness. The diffuse nature of agencies in the US immigration system as a whole perpetuate discrimination against ILSIs [Indigenous Language Speaking Immigrants] in every operation that ILSIs encounter (Gentry 2015: 11).

All things considered, detainees in borderland detention centers face serious challenges to their procedural rights that are hindered by difficulties related directly to language access issues. In response, this article directly locates language mediation in non-criminal immigration proceedings as a human right to which institutional compliance is still unresponsive and ineffectual. The authors of this article aim to offer a unique perspective on issues of language access to vulnerable populations in US / Mexico borderland detention facilities in the south of Texas. Having identified and described the detainee population in Karnes and Dilley by means of a variety of secondary sources, the following section offers a descriptive analysis of asylum and immigration proceedings in the United States followed by a detailed examination of the Critical Fear Interview (CFI), a pivotal moment in the asylum-seeking process.

2 Asylum proceedings in the United States

Generally, to be able to get asylum in the United States, asylum seekers must prove that they are unable or unwilling to return to their country of origin because of a well-founded fear of past or future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion [8 USC §1101(a)(42)(A); 8 USC §1158 (b)(1)(A)]. Asylum seekers can file their applications either affirmatively or defensively.[4] Affirmative applications are generally filed by applicants who are already in the United States or individuals who submit their application through a US Embassy or Consulate, and these affirmative applications are adjudicated by the United States Department of Customs and Immigration Services), or by the Department of Customs and Immigration Services (US Department of Homeland Security 2013: 5). On the other hand, defensive asylum applications are filed by applicants subject to removal or deportation proceedings because they have recently been apprehended by officers of the Department of Customs and Border Protection (CBP) after entering or attempting to enter the United States without proper documentation[5] or by applicants who have been referred to the Department of Immigration and Customs Enforcement (ICE) by state or local law enforcement agencies (Meissner, Kerwin, Chisthi & Bergeron 2013: 7). Defensive asylum applications are ultimately adjudicated by the Executive Office for Immigration Review (EOIR) (Brockway 2017: 197). This article focuses on *defensive* asylum processing and addresses some of the obstacles that asylum seekers encounter during the asylum seeking process, with a particular emphasis on language access barriers. Namely, the authors aim to provide some insight into the general process that asylum seekers undergo as soon as they are apprehended by CBP, the particular due process problems that they face as foreign nationals, and the type of language access that asylum seekers receive during one of the most important steps of the asylum process, the credible fear interview (CFI).

The asylum process in the United States is notoriously complex and riddled with obstacles. Upon apprehension by Customs and Border Protection (CBP), foreign nationals who wish to apply for asylum in the United States are exposed to a series of humanitarian and legal hurdles that can pose additional hardships in the midst of their already distressing journey to the United States. Almost immediately after their apprehension, asylum seekers detained at the southern Texas border with Mexico are rushed to CBP holding facilities popularly known as *hieleras* (iceboxes) (Cantor 2015: 5), where they are screened and vetted by CBP officials. These primary holding are used for temporary short-term detention; however, it has been widely reported that in some instances CBP has held immigrants for days (Cantor 2015: 1). Often times, during these preliminary screenings, CBP officials take away most of the belongings that asylum seekers bring with them, including some reported instances in which CBP officials have taken away individuals' medications to treat their pre-existing conditions (Rodríguez Alvarado and A.S.R. v. United States 2016: 12), leaving them with only the clothes that they have on (Ford 2016: 66-67). The time that asylum seekers spend at these primary holding facilities is a dire one. They are exposed to poor, unhygienic conditions and maltreatment from CBP officers (Cantor 2015: 5). Individuals are often crammed together in holding cells that are not suitable for overnight detention; mothers and children have no other option but to sleep on the floor; they are poorly fed; their medical needs are not addressed; and they are not afforded even minimal privacy to use the restroom. Some of them even experience humiliating, xenophobic remarks from some CBP officers (Ford 2016: 66-67).

Once asylum seekers are inspected at the primary holding facilities, they are then transported to a secondary holding facility in which CBP officers conduct a series of pre-screening, quasi-judicial proceedings to determine whether asylum seekers are subject to expedited removal pursuant to United States immigration laws. It is fair to say that the conditions at these secondary holding facilities, popularly known as *perreras* because of their similarity to dog pounds (Ford 2016: 68-69) do not significantly improve in comparison to those of the initial holding facilities (Photo exhibits in Doe v. Johnson 2016: n.p.).

It is precisely during the time that asylum seekers spend at these secondary holding facilities that the intricate legal journey to obtain asylum in the United States begins. Under United States immigration law, individuals that enter the United States without proper documentation [8 USC. §1182(a)(7)] are subject to expedited

4 Affirmative asylum applications are decided by an Asylum Officer in a non-adversarial system. Defensive asylum applications are adjudicated by an Immigration Judge in an adversarial setting.

5 Unaccompanied asylum-seeking minors have two opportunities to have their asylum claims adjudicated. First, they can file an affirmative asylum application with USCIS and, if denied, their application is automatically referred to the Executive Office for Immigration Review (EOIR) where an immigration officer adjudicates their application *de novo*.

removal, also known as automatic deportation, without the opportunity of appellate or judicial review [8 USC. §1225(b)(1)(B)(iii)] unless they express an intention to apply for asylum or can establish a credible and well-founded fear of persecution if returned to their country [8 USC. §1158(b)]. CBP officers rush asylum seekers into small, crowded rooms where they conduct an interview known as the credible fear interview (CFI) (King 2015: 11), a critical interview in which asylum seekers must convince Customs and Border Protection officers that their claims of fear of persecution on account of any of the five previously-mentioned grounds (race, religion, nationality, membership in a particular social group,[6] or political opinion) have merit and can hold up in court during their merits hearing [(8 USC. §1225(b)(1)(B)(v)]. It is during the credible fear interview that asylum seekers face significant barriers that hinge on the accuracy and quality of the language access services provided by Customs and Border Protection.

Asylum seekers that receive a positive determination on their critical fear interview are placed on "standard" removal, or deportation, proceedings (8 USC. §1229a), which fall under the jurisdiction of the Department of Justice, administered by the Executive Office for Immigration Review (Brockway 2017: 197). From that point onward, the EOIR has the discretionary power to indefinitely detain asylum seekers until an immigration judge grants or denies their asylum claim [8 USC. §1226(a)] or sets a judicial bond provided that the asylum seeker does not pose a flight risk or danger to society (Matter of Hussam Fatahi 2016: 793). However, in practice, the high judicial bond amounts ordered by immigration judges, without regard to the asylum seekers' ability to pay (Human Rights First 2016: n.p.) result in unreasonably prolonged detention that can last months, if not years (Domínguez, Lee, & Leiserson 2016: 33), particularly in cases involving men and women who do not bring their children with them. As a matter of fact, the Supreme Court of the United States is expected to rule on October 2, 2017[7] on the constitutionality of the prolonged, and sometimes indefinite, detention of asylum seekers (Totenberg 2016: n.p.).

Asylum seekers that remain detained under custody of ICE are place on "expedited" dockets,[8] whereas non-detained asylum seekers whose cases are assigned to Texas immigration tribunals face long waiting periods averaging 752 days (TRACImmigration 2016: n.p.) before their final merits hearing (Solis 2016: n.p.). This is in part due to the high number of immigration cases that Texas immigration judges preside over on a yearly basis. Texas has 9 immigration courts in which 43 immigration judges (US Department of Justice n.d.b: n.p.) handle on average 1500 removal cases per year (Fidler 2016: 10). From the years 2011-2015, the latest years for which data is available, EOIR received an average of 46,149 asylum applications (US Department of Justice n.d.a: n.p.).

3 Language access and the Credible Fear Interview (CFI)

There are many reasons why the CFI interview conducted by asylum officers is the most important phase of the asylum seeking process. Aside from the imminent and immediate risk of automatic deportation if asylum seekers do not pass the interview, the conditions, timing, and manner in which the interviews are conducted are inherently flawed, increasing the risk of wrongful deportation (Domínguez et. al. 2016: 32). Given the

6 In fact, attorney Aimee Heitz makes a compelling case for re-interpreting "social group" to include gender as in addition to "widespread forced marriages, rape, female genital mutilation, honor killings and forced abortions, among other types of gender-based persecution, victims of extreme domestic violence have only recently begun to form the basis of allowed claims for asylum" (2013: 214).

7 The case at issue is Jennings v. Rodriguez, in which the joint plaintiffs seek relief on their prolonged detention after being detained without a bond hearing for well over a year. The plaintiffs challenge the constitutionality of DHS's decision to keep them detained for a period exceeding six months without a bond hearing on the grounds that such a decision violates the constitutional prohibition against cruel and unusual punishment by the government under the Eight Amendment of the Constitution. Although the petition for habeas corpus was first filed in 2007, this case has a convoluted procedural history. In November 2016, in a four-to-four tie, the US Supreme Court voted to uphold the lower appellate court's decision in which the DHS prevailed. The 2016 Supreme Court ruling was in large part a product of the polarized US political system because the senate Republicans refused to confirm President Obama's candidate to fill a vacancy on the highest court of the country. This case is set for re-argument before the Court in October 2017.

8 On January 31, 2017, the Justice Department rescinded a controversial policy established in 2014 by the Obama administration which implemented a priority docket system in response to the ongoing surges of mostly Central American asylum seekers arriving in the United States. These so-called "rocket dockets" authorized EOIR to prioritize the removal of recently-arrived unaccompanied minors and families consisting of a least one adult and once child in an effort to deter future surges (US Department of Justice 2014: n.p). This policy raised due process concerns by immigration advocates, who now applaud this unexpected policy rescission coming from the Trump administration (Dickerson & Robbins 2017: n.p.).

importance of the CFI, there are particular concerns regarding the type of language interpretation provided during these interviews and the poor judicial review available to those who do not pass the test.

To begin, scant attention has been paid to the language mediation services available to detainees *before* their credible fear interviews, the importance of which cannot be underestimated. To lend context to this situation, it must be made clear that detainees' access to legal counsel is completely dependent upon volunteer, pro-bono attorneys who temporarily relocate from all around the United States to volunteer their time in Karnes or Dilley for short (usually week-long) periods of time. Since detainees are not, for the most part, facing criminal charges, they have no right to a government-funded attorney, and can benefit from the assistance of a lawyer only if they can afford one or find a volunteer (Reporters Committee for Freedom of the Press, n.d.: n.p.). Again, because the credible fear interview is not a part of a criminal proceeding, detainees likewise have no right to an interpreter in the preparation phase leading up to the credible fear interview. It could be argued, nonetheless, that a positive outcome of a credible fear interview hinges very directly on the intervention of an attorney (assisted by an interpreter), as he or she can make it absolutely clear to the petitioner that her personal narrative of credible fear must reflect persecution based on race, religion, nationality, membership in a particular social group, or political opinion in order to be successful. The interpreters for the preparation phase of the credible fear interview are, like the attorneys, volunteers: well-meaning community members, student volunteers, and certified and uncertified court interpreters motivated by a call to civic engagement. Although statistics are not available to substantiate this declaration, anecdotal evidence and the personal experience of the authors suggest that most are partially or fully untrained and untested.

While no interpreters are provided by immigration services to prepare asylum seekers with their attorneys, if they have them, ICE (US Citizen and Immigration Services) does have in place a system to authorize asylum officers to conduct credible and reasonable fear interviews in a language other than English if the asylum officer has scored at least a 3 out of 5 on the Foreign Service Institute language proficiency test (Lafferty 2013: n.p.). In other words, the asylum officer may conduct interviews in a non-English language if he or she has shown a certain level of language proficiency, but neither the officers' interpreting skills nor their knowledge of domain-specific terminology are ever evaluated. More habitually in Texas, where many official immigration proceedings require Spanish-language mediation, many of the Spanish-language interpreters come from the state's roster of certified[9] court interpreters, who interpret in person or remotely.

For most other languages, immigration personnel contract with Lionbridge and Language Line, large agencies that provide interpreters of non-publicly verifiable qualifications and experience. In the case of rare languages, when an interpreter is not locatable through one of the agencies, the Asylum Office must still schedule the applicant for an interview to determine if, in addition to the rare language, the individual is able to communicate in another language. For example an applicant who speaks Ixil may be able to adequately communicate in Spanish. An individual whose native language is Pakistani Pashtu may also speak Afghani Pashtu, Punjabi or Urdu (Kim 2013: 2).

The CFI is administered by asylum officers in a quasi-judicial setting within days of apprehension (American Immigration Lawyers Association, et al. 2015: 2). Asylum seekers are expected to communicate in a detailed, consistent, and plausible fashion with their asylum officer in order to get a positive determination on their CFI (King 2015: 11) even though interviews are often conducted in crowded places not suitable for sensitive, distressing and confidential testimony.[10] The majority of asylum seekers that enter the United States through Texas are Central American women, men, and children, either traveling as a family unit or individually, fleeing the ongoing gang violence crisis that persists in the Northern Triangle of Central America (Human Rights First 2015: 1). These asylum seekers normally travel through many countries under inhumane conditions and often arrive at US facilities sick and traumatized from their pre-migration experiences (Keller, Joscelyne, Granski, & Rosenfeld 2017: 6) as well as their journey to the United States, rendering them incapable –and in some cases even judicially incompetent– to provide a full and accurate account of their claims for seeking asylum in the United States (American Immigration Lawyers Association et al. 2015: 2).

9 In Texas, interpreters who have passed oral certification exams are known as LCIs, or Licensed Court Interpreters.

10 The asylum officer will want to know the following: (1) Who harmed, persecuted or tortured the asylum seeker?; (2) Why was she personally persecuted?; (3) Was the persecution motivated by her race, religion, nationality, political opinion, or membership in a group?; (4) How was the government involved, or was there a lack of government involvement?; (5) Is there a chance of internal relocation within her country to avoid being persecuted? (The Florence Immigrant and Refugee Rights Project, 2013: n.p.).

Given the high stakes involved at the credible fear interview and the fact that most of the asylum seekers are LEP (of limited English proficiency), a logical inference would be that the Department of Homeland Security would provide – just like in federal criminal cases – free, *certified* interpreters to ensure that the claims asserted by asylum seekers during the interviews are accurately conveyed to the asylum officer. In reality, however, the language interpreting services provided are deficient, inefficient and sometimes result in wrongful deportations of asylum seekers either at the CFI stage or even during their final merits hearing –particularly in the case of people that get set free on a judicial bond (Garza 2017: n.p.).

Pursuant to an executive order signed by president Clinton (Executive Order 13166 2000: n.p.), the Department of Homeland Security has set forth a number of mechanisms intended to assist LEP individuals with their credible fear interview claims, including the ability to enter into agreements with third-party interpreting agencies[11] and distributing translated written materials in key languages addressing the CFI process (US Department of Homeland Security 2012: 25). The effect of DHS's decision to essentially outsource its language access services to for-profit third-party interpreting agencies is that it shifts the potential liability that could arise from ineffective language interpretation onto these agencies that may or may not have policies in place to hire certified interpreters. In other words, this shift in liability effectively shields DHS from potential lawsuits and diverts the responsibility of ensuring that the interpreters used during the CFI have been certified or, at the very least, that they have received necessary and proper training to comply with the very minimal federal requirements that currently exist.

The CFI is, arguably by legislative design, slanted against asylum seekers. CFIs are considered by the government to be non-adversarial processes in which the asylum seeker bears the burden of proving that there is a significant possibility[12] that the interviewee could establish eligibility for asylum under US immigration law [8 USC. 1225(b)(1)(B)(v)]. Furthermore, for purposes of immigration law, the CFI is not considered an immigration hearing or proceeding: those are presided over by an immigration judge (8 USC. §1229a) and, therefore, asylum seekers are not afforded the already very limited rights that they would normally have at a later stage of the process (American Immigration Lawyers Association 2016: 16). And although in theory the law entitles asylum seekers to receive consultation from an attorney and to have the attorney present during the CFI [8 C.F.R. §208.30(d)], immigration judges interpreting this provision have ruled that asylum seekers are merely entitled to consultation, not *representation* by an attorney that could object to any errors during the language interpretation process, at least for the crucial purpose of getting the objection on the official record for appellate purposes[13] (García Hernández 2014: n.p.). In practice, however, a vast majority of asylum seekers do not have access to an attorney to consult and prepare them prior to the CFI because most secondary holding facilities are located in rural areas of Texas with limited availability of pro-bono attorneys (American Immigration Lawyers Association 2016: 16).

Moreover, even if asylum seekers pass their CFI and are allowed to apply for asylum in the United States, the effects of inefficient language interpretation during the CFI can have an overreaching detrimental impact during their final merits hearing. Once the CFI is over, asylum seekers are given a transcript of the interview that will be used during their merits hearing as evidence of the asylum seeker's claims for seeking asylum in the United States (Garza 2017: n.p.). Any inconsistencies or inaccuracies between the transcript and the asylum seeker's in-court testimony during the final merits hearing can be used by the prosecutor to attack the asylum seeker's credibility [8 USC. §1158(b)(1)(A-B)].

Ultimately, asylum in the United States is a discretionary form of relief granted by the Executive Office for Immigration Review [8 USC. §1158(a)]. Therefore, even if asylum seekers are able to meet their burden and prove all of the asylum elements, if the immigration judge (upon considering the totality of the circumstances

11 As previously mentioned, CFIs conducted in Texas are generally serviced by Lionbridge Global Solutions II, an over-the-phone language interpretation agency (US Department of Homeland Security n.d.: n.p.).

12 The "significant possibility" burden of proof is an easier standard to meet, as opposed to the more stringent "well-founded fear" burden of proof applied by immigration courts during the merits hearing. In theory, the asylum officer has an affirmative duty to elicit information from the interviewee to develop the record (US Department of Homeland Security 2014: 12).

13 Individuals that do not pass their CFI have a right to have an immigration judge review *de novo* the asylum seeker's statements to determine if she has met her "significant possibility" burden of proof [8 C.F.R.§1003.42]. Under certain limited circumstances the asylum seeker may be able to appeal the immigration judge's criminal fear interview determination to the Board of Immigration Appeals and, under even more limited circumstances, she may be able to take her appeal to the federal circuit courts system.

and all relevant facts) finds that the asylum seeker's claims are not credible based on "the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, [or] the consistency between the applicant's or witness's written and oral statements…," among other factors, the immigration judge has the discretion to deny asylum and to order the asylum seeker removed [8 USC. §1158(b)(1)(B)(iii)]. Practicing immigration attorneys report cases of asylum denials based on the inconsistencies between the CFI transcript and the verbal or written testimony presented during the final merits hearing, even when those inconsistencies are attributed to the fact that the asylum seeker did not understand the interpreter (or the asylum officer through the interpreter) – or when the interpreter simply misinterpreted something said during the credible fear interview[14] (Garza 2017: n.p.).

In general, from start to finish, defensive asylum cases fall within the broad jurisdiction of the Department of Homeland Security (DHS) and the Department of Justice (DOJ), both of which are administrative branches of the federal government. Unlike federal criminal and civil proceedings in the United States, which have more constitutional constraints particularly within the context of language access to LEP individuals, administrative agencies are afforded judicial deference with respect to the structure, rules, and decision-making at an agency level as well as during their adjudicative proceedings (Martin & Super 2007: 598-99). For instance, when an LEP individual faces criminal charges, most federal courts assign court-appointed, federally certified interpreters to ensure that the accused's due process and equal protection constitutional rights are enforced (Abel 2013: 6-9). In contrast, it appears that the only requirement that interpreters must comply with during administrative hearings is that the interpreter swears under oath that he or she has provided an accurate interpretation [8 C.F.R. §1003.22]. And although DHS acknowledges the importance of professional certified interpreters during immigration enforcement proceedings (US Department of Homeland Security 2012: 2), it fails to create regulations imposing a certification requirement for interpreters involved in immigration proceedings. Although this issue has not been resolved by federal courts or the legislature, as mentioned before, given the judicial deference afforded to administrative agencies, it is a reasonable prediction to say that courts would likely find that DHS and DOJ[15] meet their federal obligations to provide language access services.

4 Discussion and conclusions

This article has sought to inform members of the judiciary, language mediators, translation studies scholars and human rights activists of the practical and judicial reality of language access in borderland detention centers on the United States – Mexico border, especially in direct relationship to the credible fear interview in the asylum-seeking process. Focusing a critical lens on the unknown quality and inconsistent availability of language access to migrants, especially those who are speakers of indigenous languages, has led to a series of issues which merit further research and discussion. These questions directly touch upon issues of due process, the practice of outsourcing of language service provision, the use of untested and untrained interpreters in quasi-judicial settings, and a highly uncertain future for migrants at the dawn of the decidedly anti-immigrant Trump presidency.

In legal terms, even though the Supreme Court of the United States has ruled that all "persons" within the US territory are afforded the same due process rights engraved in the US Constitution under its Fifth and Fourteenth amendments, irrespective of their legal status in the country (Zadvydas v. Davis 2001: 693), current immigration enforcement rules and practices seriously undermine that constitutional right. The government's refusal to provide free court-appointed attorneys has serious detrimental consequences that result in prolonged detention and even wrongful deportations (Coon 2015: n.p.). Moreover, the Department

14 It is essential to point out that the "transcript" that asylum seekers are given is not a word-by-word written account in the original language of what transpired during the CFI. Rather, they are given an English-language transcript of the conversation. Based on anecdotal experience by one of the authors, these "transcripts" are sometimes redacted and polished to such an extent that some asylum seekers do not recognize their own testimony.

15 The EOIR reports to employ over 90 staff interpreters for key languages and has established specific qualifications that they must meet, which include: (1) One year of specialized consecutive and simultaneous experience interpreting in a judicial environment; (2) Comprehensive knowledge of the linguistic aspects of court interpretation; (3) Mastery of vocabulary, grammar, syntax, idiom, colloquialism, culturally-based terms, and technical terms in English and a foreign language; and (4) A 3+ score on the Interagency Language Round Table scale (US Department of Homeland Security n.d.:3). However, the EOIR does not require its staff interpreters to be federally certified as interpreters.

of Homeland Security's decision to outsource its language interpreting services to third-party agencies calls into question whether asylum seekers are put at significant disadvantage when compared to the type of interpreting services provided to undocumented LEP individuals facing federal *criminal* convictions, not to mention the obvious due process violations that asylum seekers may experience due to the dire and inhumane conditions to which they are exposed while in custody of Customs and Border Protection, Homeland Security, or the Department of Justice.

Many unanswered questions and unexplored areas of inquiry remain in this quasi-legal asylum-seeking realm. Indeed, the criminalization of immigration has led immigration and asylum procedures to occupy a sort of grey zone. While it is often understood that "The main difference between civil and criminal investigations is that civil cases are intended to lead to deportation and criminal cases are designed to lead to incarceration" (Reporters Committee for Freedom of the Press, n.d.: n.p.), the massive expansion of the practice of long-term incarceration of immigrants, even those who are not facing criminal charges, is simply unprecedented. Ultimately, the expansion of immigration repression, "with ever-harsher enforcement, arbitrary imprisonment, and indiscriminate deportations, has resulted in a global human rights crisis that profoundly undermines modern democracies" (Amnesty International 2008 in Camayd-Freixas 2013: 16).

Interpreting in asylum settings is woefully under-researched and has been largely neglected so far in Translation Studies (Pöllabauer 2006: 151; Pöllabauer 2004: 143), and little research has been done to interrogate the role of interpreters in this quasi-legal context. In terms of power and control hierarchies, even though researchers such as Pöllabauer (2006: 153) have observed attitudes of loyalty and "cooperativity" emerge between officers and their interpreters, with interpreters managing the communication space and even actively trying to resolve conflicts which threaten the asylum officer's face, other interpreters in asylum settings describe their work as a hybrid area of the law (see Camayd-Freixas 2013) with moveable boundaries and extreme ethical challenges. Pöllabauer reflects upon the major influence exerted by interpreters in such processes, creating the potential for misunderstandings which could lead to "damage to the applicant's self-image, incorrect diagnosis, misleading information or financial loss" (2006: 151) or, more seriously, deportation to the applicant's home country, "which may be tantamount to a death sentence" (2006: 151). Interpreters in asylum hearings often assume discrepant roles that are not clear-cut and which, in fact, often seem rather blurred. In the case of key moments in the asylum seeking process such as in the credible fear interview, the role of language mediators must be more closely examined if only because of the appreciable impact they exert over the outcome.

To compound the confusion, language access for detainees is (un)managed primarily by non-professionals, a key aspect of the affirmative asylum process which needs to be analyzed given the fact that during USCIS (United States Department of Customs and Immigration Services) asylum interviews, applicants have to bring their own interpreter. Moreover, no specific training exists for interpreting in asylum hearing settings in many countries (Pöllabauer, 2004: 145), and no consensus seems to exist on the role of interpreters, the demands made of them or their effect on the proceedings (Pöllabauer, 2004: 148). Even professional (trained, experienced, and/or certified) court interpreters are unprepared for work in detention centers. In other words, even those accustomed to working in immigration or criminal courts now face unprecedented ethical challenges in this changing landscape as a result of the growing trend towards criminalizing immigration, "so prevalent in recent years in the United States that jurists have identified it as a new hybrid and highly unstable area of the law they ironically term 'crimmigration' (Camayd-Freixas 2013: 16).[16] The emotional toll on attorneys and language mediators also remains under-examined, with some practitioners calling for greater attention to the role of advocacy for (not just within) judicial interpreting. Camayd-Freixas describes the fear, isolation and disenfranchisement felt by working in an atmosphere characterized by the erosion of "democratic principles and constitutional protections, including abuse of process, arbitrary detention, intimidation, and torture" (2013: 20), examples of abuse to which interpreters are forced to become tacitly complicit.[17]

16 See Camayd-Freixas 2009 for a more detailed account of the now infamous Postville raid, the unprecedented, largest single raid of a workplace in US history. At the Postville, Iowa meat packing plant, nearly 400 immigrant workers were victims of a fast-tracked mass incarceration. Some 300 workers were convicted, sentenced and incarcerated on charges of identity theft, document fraud, the use of stolen social security numbers, and similar charges.

17 For example, Gentry's 2015 report calls for interpretation services for LEP detainees specifically for the prevention and reporting of sexual abuse and assault (12).

The well-documented influx of migrants and unaccompanied minors in 2014 did not mark the end of massive inflows of newcomers and a mounting humanitarian crisis with no reliable, qualified language access infrastructure. In fact, the crisis did not stop when the headlines did. According to Border Patrol statistics, "46,195 people were apprehended on the southwest border in October [2016] – an increase from recent months and a rise of 41% from the previous October" (Dart 2016: n.p.). Furthermore, at the time of this writing, Donald Trump has been in office as President of the United States for mere months, and one of his first executive orders, that of January 27th, 2017,[18] portends the likelihood that language access for asylum seekers in the US will be detrimentally impacted given the new administration's stance on issues of asylum and immigration in general.

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18 Trump's executive order of January 27th, 2017 severely restricts immigration from seven primarily Muslim countries, suspends all refugee admission for 120 days, and bars all Syrian refugees indefinitely (Office of the Press Secretary, The White House, 2017).

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